IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

United States of America, Plaintiff, v. Winston Shrout, Defendant.	)	Case No. 3:15-cr-00438-JO

FINAL JURY INSTRUCTIONS

DATED: April 20, 2017

Robert E. Jones
United States District Court Judge

DUTY TO DELIBERATE

Members of the Jury:

Now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law and must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. You will recall that you took an oath promising to do so at the beginning of the case.

You must follow all these instructions and not single out some and ignore others; they are all important. Please do not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

SUPERSEDING INDICTMENT NOT EVIDENCE
PRESUMPTION OF INNOCENCE–BURDEN OF PROOF

The superseding indictment is not evidence. The defendant has pleaded not guilty to all charges. The defendant is presumed to be innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of each charge beyond a reasonable doubt.

TESTIFYING DEFENDANT

The defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

REASONABLE DOUBT – DEFINED

Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

EVIDENCE – DEFINED

The evidence you are to consider in deciding what the facts are consists of the sworn testimony of any witness, the exhibits received in evidence, and any facts to which the parties have agreed.

WHAT IS NOT EVIDENCE

In reaching your verdict you may consider only the testimony and exhibits received in evidence. The following things are not evidence and you may not consider them in deciding what the facts are:

1. Questions, statements, objections, and arguments by the lawyers or the defendant acting as his own lawyer are not evidence. The lawyers and the defendant except when he testified on the witness stand are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers and the defendant have said in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.

2. Any testimony that I have excluded, stricken, or instructed you to disregard is not evidence

3. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

(1) the witness's opportunity and ability to see or hear or know the things testified to;

(2) the witness's memory;

(3) the witness's manner while testifying;

(4) the witness's interest in the outcome of the case, if any;

(5) the witness's bias or prejudice, if any;

(6) whether other evidence contradicted the witness's testimony;

(7) the reasonableness of the witness's testimony in light of all the evidence; and

(8) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

SEPARATE CONSIDERATION OF MULTIPLE COUNTS

A separate crime is charged against the defendant in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

GOVERNMENT'S USE OF UNDERCOVER AGENTS

You have heard testimony from an undercover agent who was involved in the government's investigation in this case. Law enforcement officials may engage in stealth and deception, such as the use of undercover agents, in order to investigate alleged criminal activities. Undercover agents may use false names and appearances.

OPINION EVIDENCE, EXPERT WITNESS

You have heard testimony from William Kerr who testified to his opinion regarding whether certain documents are fictitious. You also heard from Kristin Emminger who testified as to the tax consequences of various documentary and testimonial evidence. This opinion testimony is allowed because of the education or experience of these witnesses.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

SUMMARIES AND CHARTS

During the trial, certain charts and summaries were shown to you in order to help explain the evidence in the case. These charts and summaries have been admitted in evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

OTHER CRIMES, WRONGS OR ACTS OF DEFENDANT

You are here only to determine whether the defendant is guilty or not guilty of the charges in the superseding indictment. The defendant is not on trial for any conduct or offense not charged in the superseding indictment.

You have heard evidence that the defendant committed other acts not charged here. You may consider this evidence only for its bearing, if any, on the question of the defendant's intent, plan, knowledge, identity, or absence of mistake and for no other purpose.

ON OR ABOUT – DEFINED

The Superseding Indictment charges that the offenses alleged were committed "on or about" a certain date.

Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the dates alleged in each count of the superseding indictment, it is not necessary for the government to prove that the offenses were committed precisely on the date charged.

SUPERSEDING INDICTMENT

The defendant is charged with a total of 19 counts that can be grouped under two different statutes. Each of Counts 1 through 13, alleges a violation of 18 U.S.C. § 514(a), involving fictitious financial instruments. Each of counts 14 through 19 alleges a violation of a different statute, 26 U.S.C. § 7203, involving willful failure to file tax returns.

First, I will instruct you regarding the first group of charges, Counts 1 through 13, involving fictitious financial instruments.

18 U.S.C. § 514(a) FICTITIOUS FINANCIAL INSTRUMENTS (Counts 1 through 13)

The defendant is charged in Counts 1 through 13 of the Superseding Indictment with violating 18 U.S.C. Section 514(a). That subsection reads as follows:

Whoever with the intent to defraud–

(1) Draws, prints, processes, produces, publishes, or otherwise makes, or attempts or causes the same, within the United States;

(2) Passes, utters, presents, offers, brokers, issues, sells, or attempts or causes the same or with like intent possesses, within the United States; or

(3) Utilizes interstate or foreign commerce, including the use of the mails or wire, radio, or other electronic communication, to transmit, transport, ship, move, transfer, or attempts or causes the same, to, from, or through the United States,

Any false or fictitious instrument, document, or other item appearing, representing, purporting, or contriving through scheme or artifice, to be an actual security or other financial instrument issued under the authority of the United States, a foreign government, a State or other political subdivision of the United States, or an organization, is guilty of violating this statute.

Counts 1 through 13 allege different but related violations of the three subsections I just read under Section 514(a). Counts 1 through 7 allege that the defendant produced or made fictitious financial instruments in violation of Section 514(a)(1). Counts 8 through 10 allege that the defendant passed or presented fictitious financial instruments in violation of Section 514(a)(2). Counts 11 through 13 allege that the defendant mailed or shipped fictitious financial instruments in violation of Section 514(a)(3).

In order for the defendant to be found guilty of any charge under this statute, the government must prove each of the following elements beyond a reasonable doubt for the particular count:

First: with respect to Counts 1 through 7, the defendant produced or made a false or fictitious instrument, document, or other item; with respect to Counts 8 through 10, the defendant passed or presented such an item; and with respect to Counts 11 through 13, the defendant utilized interstate commerce to mail or ship such an item through the United States;

Second: with respect to all counts under this statute, that the item appeared, represented, purported, or contrived through scheme or artifice, to be an actual security or other financial instrument issued under the authority of the United States or an organization; and

Third: with respect to all counts under this statute, that the defendant acted with the intent to defraud.

For the purposes of Counts 1 through 13, I will define the some of the terms which appear in the instruction I just gave you describing the elements the government must prove.

(1) False or fictitious. A "false or fictitious instrument" is a bogus document contrived to appear to be a financial instrument, where there is in fact no such genuine instrument, and where the fact of the genuine instrument's nonexistence

is presumably unknown by, and not revealed to, the intended recipient of the document.

The government is not required to prove that the false or fictitious instrument or document appeared to be similar to any actual financial obligation in particular. The item need only appear to be in a class of genuine financial instruments or contain sufficient hallmarks that they appear to be genuine financial instruments. Such hallmarks include, but are not limited to:

> Official seals, serial numbers, portraits of government buildings or officials; symbols or mottos of the issuing nation or entity; official signatures; dates of issue; and statements to the effect that the document shall serve as legal tender or be redeemable for something of value.

Fictitious instruments include bogus instruments that a prudent person might upon consideration be unlikely to accept as genuine, so long as those documents have sufficient hallmarks so that they appear to be genuine financial instruments. The implausibility of the document may be considered, however, in determining whether the defendant had an intent to defraud.

(2) Pass, present, offer, or issue. To "pass, present, offer or issue" a false or fictitious instrument, document, or other item includes any attempt to spend the item or otherwise place it in circulation.

(3) Appearing or purporting. Each specific instrument must purport to be issued under the authority of the United States, another government entity, or an organization, which means that the document must claim, represent, or purport to have a power or

entitlement that is grounded in the authority of the United States government or other organization.

(4) Intent to defraud. To act with "intent to defraud" means to act with intent to cheat or deceive. It is not necessary, however, whether anyone was in fact cheated or deceived. Further, in determining whether the defendant acted with intent to defraud, you may consider whether the defendant had an honest, good faith belief in the authenticity of the documents alleged in the Superseding Indictment or in his authority to create them. One who acts with honest intention does not have fraudulent intent. A defendant isn't required to prove good faith. The Government must prove intent to defraud beyond a reasonable doubt.

26 U.S.C. § 7203 WILLFUL FAILURE TO FILE TAX RETURN (Counts 14 through 19)

The defendant is charged in Counts 14 through 19 of the Superseding Indictment with willful failure to file a tax return in violation of Section 7203 of Title 26 of the United States Code.

In order for the defendant to be found guilty of any charge under this statute, the government must prove each of the following elements beyond a reasonable doubt for the particular count:

First, the defendant was required by law to file a tax return for the calendar year alleged in each count;

Second, the defendant failed to file a tax return by the required due date alleged in each count as required by law; and

Third, in failing to file a tax return, the defendant acted willfully.

In order to prove that the defendant acted "willfully," the government must prove beyond a reasonable doubt that the federal tax law imposed a duty on the defendant, the defendant knew of this duty, and the defendant intentionally and voluntarily violated that duty.

A defendant who acts on a good faith misunderstanding as to the requirements of the law does not act willfully even if his understanding of the law is wrong or unreasonable. Nevertheless, merely disagreeing with the law does not constitute a good faith misunderstanding of the law because all persons have a duty to obey the law whether or not they agree with it. Thus, in order to prove that the defendant acted willfully, the government must prove beyond a reasonable doubt that the defendant did not have a good faith belief that he was complying with the law.

DUTY TO DELIBERATE

When you begin your deliberations, elect one member of the jury as your foreperson who will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict on each count, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

CONSIDERATION OF EVIDENCE–CONDUCT OF THE JURY

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during your deliberations:

> Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any Internet chat room, blog, website or other feature. This applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.
>
> Do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire trial process to start over. If any juror is exposed to any outside information, please notify the court immediately.

USE OF NOTES

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

CONSIDERATION OF PUNISHMENT

The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

VERDICT FORM

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson should complete the verdict form according to your deliberations, sign and date it, and advise the court that you are ready to return to the courtroom.

COMMUNICATION WITH THE COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the clerk, signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, on any question submitted to you, including the question of the guilt or innocence of the defendant, until after you have reached a unanimous verdict or have been discharged.